



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-1914/1002

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D-NOTE

Stays

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2007 BILL

Friday  
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1 AN ACT *to repeal* 60.23 (24), 66.0419 (title), (1), (2) and (3), 66.0421 (1) (a),  
2 66.0421 (1) (b), 66.0422 (1) (a), 100.209, 196.04 (4) (a) 1. and 196.204 (7); *to*  
3 *renumber* 196.04 (4) (a) 2. a. to e.; *to renumber and amend* 66.0419 (3m) and  
4 943.46 (1) (a); *to consolidate, renumber and amend* 196.04 (4) (a) (intro.)  
5 and 2. (intro.); *to amend* 11.01 (17g), 20.395 (3) (jh), 25.40 (1) (a) 4m., 66.0421  
6 (title), 66.0421 (2), 66.0421 (3), 66.0421 (4), 66.0422 (title), 66.0422 (2) (intro.),  
7 66.0422 (3) (b), 66.0422 (3n), 70.111 (25), 76.80 (3), 77.52 (2) (a) 12., 100.195 (1)  
8 (c) 2., 165.25 (4) (ar), 196.01 (1g), 196.01 (9m), 196.04 (4) (b), 196.195 (5),  
9 196.203 (1m), 196.203 (3) (b) (intro.), 196.203 (3) (b) 2., 196.203 (3) (c), 196.203  
10 (3) (d), 196.203 (3) (e) 1. (intro.), 196.50 (1) (b) 2. e., 196.50 (1) (c), 196.85 (1m)  
11 (b), 943.46 (title), 943.46 (2) (a), 943.46 (2) (b), 943.46 (2) (c), 943.46 (2) (d),  
12 943.46 (2) (e), 943.46 (2) (f), 943.46 (2) (g) and 943.46 (5); *to repeal and*  
13 *recreate* 100.195 (1) (h) 1. and 196.01 (1p); and *to create* 66.0420, 66.0421 (1)  
14 (c), 66.0421 (1) (d), 66.0422 (1) (d), 196.01 (12g), 196.01 (12r), 943.46 (1) (d) and

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- 1           943.46 (1) (e) of the statutes; **relating to:** regulation of cable television and  
2           video service providers.
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***Analysis by the Legislative Reference Bureau***

Current federal law generally prohibits a person from providing cable service without a cable franchise. Under current federal and state law, cable service is defined, in part, as the one-way transmission of "video programming," which is defined as programming provided by, or generally considered comparable to, programming provided by a television broadcast station. Current federal law allows either states or municipalities to grant cable franchises to persons who provide cable service, which are referred to as "cable operators." Under current state law, municipalities (i.e., cities, villages, and towns) grant or revoke franchises. In addition, current state law allows a municipality to require a cable operator to pay a franchise fee to the municipality that is based on the operator's income or gross revenues.

This bill repeals state law authorizing municipalities to grant cable franchises to cable operators. Instead, the bill requires a person who provides "video service" to obtain a video service franchise from the Department of Financial Institutions (DFI). The bill defines "video service" as any video programming service, cable service, or service provided by certain "open video systems," without regard to delivery technology, but only if the service is provided through facilities that are located, at least in part, in public rights-of-way. (An "open video system" is system regulated under federal law that combines features of cable television and telecommunications systems.) The bill's definitions of "video programming" and "cable service" are comparable to the definitions under current law described above. As a result, video service includes both the one-way and two-way transmission of video programming. However, the following types of video programming are excluded from the definition of "video service": 1) video programming provided by wireless telephone companies; and 2) video programming provided solely as part of and via a service that enables users to access content, information, electronic mail, and other services offered over the public Internet.

Under the bill, if a person has not been issued a cable franchise under current law, the person may not provide video service unless DFI issues a video service franchise to the person. The bill allows a cable operator who has been issued a cable franchise under current law to provide cable service under the cable franchise until the cable franchise expires, or apply to DFI for a video service franchise. The bill refers to a cable operator who elects to provide cable service until the expiration of a cable franchise as an "interim cable operator." Upon the expiration of a cable franchise, an interim cable operator must apply to DFI for a video service franchise in order to continue to provide cable service. If a cable operator elects to apply for a video service franchise before the expiration of its cable franchise, the bill provides that the cable franchise terminates upon DFI's issuance of a video service franchise.

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***Application process.*** The bill requires an applicant for a video service franchise to submit an application to DFI that consists of certain business information about the applicant and an affidavit affirming that the applicant will comply with federal filing requirements, as well as state and federal laws regarding video service. In addition, the applicant must describe the areas of the state in which the applicant intends to provide video service, which the bill defines as the "video franchise area," as well as the dates on which the applicant intends to begin providing service in such areas.

At the time an applicant submits an application, the applicant must serve a copy of the application on each municipality in the video franchise area. If such a municipality has granted a cable franchise to a cable operator under current law, the municipality must, not later than ten business days after receipt of the copy, notify the applicant of the following: 1) the percentage of revenues that cable operators are required to pay the municipality as franchise fees under current law; and 2) the number of "PEG channels" for which cable operators are required by the municipality to provide channel capacity. The bill defines "PEG channel" as a channel designated for noncommercial public, educational, or governmental use.

No later than ten business days after receipt of an application, DFI must notify the applicant as to whether the application is complete. No later than ten business days after receipt of an application that DFI determines is complete, DFI must issue a video service franchise to the applicant. If DFI fails to meet this deadline, the bill provides that DFI is considered to have issued a video service franchise to the applicant, unless the applicant withdraws the application or agrees with DFI for an extension of time. The bill refers to a person to whom DFI issues, or is considered to have issued, a video service franchise as a "video service provider."

***Video service franchises.*** A video service franchise under the bill authorizes a video service provider to construct, operate, maintain, and repair a video service network in the video franchise area. A video service franchise does not expire, unless a video service provider gives 30 days' advance notice to DFI that the video service provider intends to terminate the video service franchise. A video service provider may transfer a video service franchise to any successor-in-interest, including a successor-in-interest that arises through merger, sale, assignment, restructuring, change of control, or any other transaction. A video service provider must notify DFI and affected municipalities about the transfer, but the bill prohibits DFI and municipalities from reviewing or approving the transfer.

***Video service franchise fees.*** The bill requires a video service provider to pay a fee on a quarterly calendar basis to each municipality in which the video service provider provides video service. The bill refers to the fee as a "video service franchise fee." The amount of the video service franchise fee is based on a percentage of the video service service provider's "gross receipts," which is defined in the bill. If no cable operator was required under current law to pay a franchise fee based on a percentage of gross revenues to a municipality on the effective date of the bill, a video service provider must pay a video service franchise fee to the municipality that is equal to 5 percent of the video service provider's gross receipts, or a lesser percentage specified by the municipality. If only one cable operator was required under current

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law to pay a franchise fee based on a percentage of gross revenues to a municipality on the effective date of the bill, a video service provider must pay a video service franchise fee to the municipality that is equal to that percentage or 5 percent, whichever is less. If more than one cable operator was required under current law to pay a franchise fee based on a percentage of gross revenues to a municipality on the effective date of the bill, a video service provider must pay a video service franchise fee to the municipality that is equal to the lowest such percentage or 5 percent, whichever is less.

As noted above, no later than ten business days after a municipality is served a copy of a video service provider's application for a video service franchise, the municipality must notify the video service provider of the percentage of revenues that cable operators are required to pay the municipality as franchise fees under current law. If a municipality is not required to make such a notification, the video service provider's duty to pay a video service franchise fee first applies to the quarter in which the video service provider begins to provide video service in the municipality. If the municipality is required to make such a notification, and makes the notification before the deadline, the video service provider's duty first applies to the quarter in which the video service provider begins to provide video service, or the quarter that includes the 45th day after the video service provider receives the notification, whichever is later. If the municipality fails to comply with the deadline, a video service provider is not required to pay a video service provider fee until the 45th day after the end of the quarter in which the municipality ultimately provides the notification, and no other video service provider or interim cable operator is required to pay a video service provider fee or franchise fee until the same date.

The bill allows municipalities to review the business records of a video service provider no more than once in any three-year period for the purpose of ensuring proper and accurate payment of a video service provider fee. The bill prohibits a video service provider or municipality from bringing an action in court regarding the amount of a video service provider fee until the parties have completed good faith settlement negotiations. In addition, an action regarding a dispute over such an amount must be commenced within three years following the calendar quarter to which the disputed amount relates, or is barred, unless the parties agree to an extension of time.

**PEG channels.** The bill imposes limitations on the number of PEG channels for which a municipality may require a video service provider to provide channel capacity. If, immediately before the effective date of the bill, a municipality required a cable operator to provide channel capacity for a specified number of PEG channels, the municipality must require all video service providers and interim cable operators to provide channel capacity for that specified number of PEG channels. If a municipality did not require a cable operator to provide such channel capacity, then the number of PEG channels for which a municipality may require channel capacity depends on the population of the municipality. If the municipality's population is 50,000 or more, the municipality may require each video service provider and interim cable operator to provide channel capacity for up to three PEG channels. If the municipality's population is less than 50,000, the municipality may require each

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video service provider and interim cable operator to provide channel capacity for up to two PEG channels. If an interim cable operator or video service provider distributes video programming to more than one municipality through a single headend or video hub office, the bill requires the populations of the municipalities to be aggregated for the purpose of applying the foregoing requirements.

The bill includes requirements for determining when the duty of a video service provider to provide channel capacity for PEG channels first applies. As noted above, no later than ten business days after a municipality is served a copy of a video service provider's application for a video service franchise, the municipality must notify the video service provider of the number of PEG channels for which cable operators are required provide channel capacity. In general, the duty of a video service provider begins on the date on which the video service provider begins to provide video service in the municipality, or on the 90th day after the video service provider receives the municipality's notice, whichever is later. However, if a municipality fails to comply with the ten-business-day deadline, no video service provider or interim cable operator is required to provide channel capacity for PEG channels until the 90th day after the municipality ultimately provides the notice.

The bill also allows video service providers and interim cable operators to reprogram channel capacity for PEG channels that is not substantially utilized, as determined under the bill, by a municipality. Under certain circumstances, the bill allows a municipality to require the restoration of channel capacity for PEG channels.

The bill creates other requirements for PEG channels, including the following: 1) the bill prohibits municipalities from requiring video service providers and interim cable operators from providing funds, services, programming, facilities, or equipment related to public, educational, or governmental use of channel capacity; 2) the bill imposes specified duties on municipalities regarding the provision of content and programming PEG channels; 3) the bill imposes limits on the amount of transmission line that a video service provider or interim cable operator may be required to provide for making a connection to the municipality's PEG channel programming distribution point; and 4) the bill imposes requirements on video service providers and interim cable operators regarding interconnection that is necessary for transmitting PEG channel programming.

***Discrimination and access.*** In general, the bill prohibits a video service provider from denying access to video service to any group of potential residential customers in a video franchise area because of the race or income of the residents in the local area in which the group resides. The bill creates a defense against an alleged violation of the prohibition regarding income for a video service provider if either of the following are satisfied: 1) no later than three years after the video service provider begins to provide video service, at least 25 percent of households with access to the video service provider's video service are low-income households; or 2) no later than five years after the video service provider begins to provide video service, at least 30 percent of households with access to the video service provider's video service are low-income households. The bill defines "low-income household" as a household whose aggregate income is not more than \$35,000, as identified by

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the United States Census Bureau as of January 1, 2007. Under certain circumstances, the bill allows DFI to grant a video service provider an extension of the time limits specified in the defense.

The bill also imposes access requirements on certain video service providers that use telecommunications facilities to provide video service. The access requirements apply if a video service provider has more than 500,000 basic local exchange access lines in the state. No later than three years after such a video service provider begins to provide video service, the video service provider must provide access to its video service to not less than 25 percent of the households within the video service provider's basic local exchange area that is on file with the Public Service Commission (PSC). In addition, no later than six years after such a video service provider begins to provide video service, or no later than two years after at least 30 percent of households with access to such a video service provider's video service subscribe to the service for six consecutive months, whichever occurs later, the video service provider must provide access to its video service to not less than 50 percent of the households within the video service provider's basic local exchange area that is on file with the PSC. Such a video service provider must file annual reports with DFI regarding progress in complying with the access requirements. Under certain circumstances, the bill allows DFI to grant such a video service provider an extension of the foregoing time limits or a waiver from the need to comply with the foregoing requirements.

**Customer service standards.** Except as noted below, the bill allows a municipality, upon 90 days' advance notice, to require a video service provider to comply with certain customer service standards set forth in regulations promulgated by the Federal Communications Commission (FCC). The bill prohibits DFI and municipalities from imposing any additional or different customer service standards. In addition, the bill provides that, except for customer service standards promulgated by rule by the Department of Agriculture, Trade and Consumer Protection (DATCP), a video service provider in a municipality may not be subject to any customer service standards if at least one other person offers video or cable service in the municipality, or if the video service provider is subject to effective competition, as determined under FCC regulations. If one of the foregoing conditions is satisfied, a municipality may not impose the FCC customer service standards mentioned above.

**Rate regulation.** The bill prohibits DFI and municipalities from regulating video or cable service rates of video service providers or interim cable operators that provide service in a municipality if at least one other unaffiliated video service provider or interim cable operator serves the municipality.

**Municipal authority.** The bill provides that, for purposes of federal law, the state is the exclusive franchising authority for video service providers in this state. In addition, the bill prohibits municipalities from requiring a video service provider to obtain a franchise to provide video service or imposing on video service providers any fee or requirement relating to the construction of a video service network or the provision of video service, except as otherwise authorized under the bill. Also, the bill provides that, if a video service provider pays video service provider fees to a

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municipality as required under the bill, the municipality may not require the video service provider to pay any compensation allowed under current law for obstructions or excavations, or pay any permit fee, encroachment fee, degradation fee, or any other fee, for the occupation of or work within public rights-of-way.

**Rule making and enforcement.** The bill prohibits DFI from promulgating any rules interpreting the bill's provisions, or establishing procedures for the bill's requirements. The bill allows a municipality, video service provider, or interim cable operator that is affected by a failure to comply with the bill to bring an action in court to enforce the bill. (Court actions regarding disputes over video service provider fees are subject to additional requirements discussed above.) In addition, the bill allows the Department of Justice to bring an action to enforce the bill.

**Other provisions.** The bill also does all of the following:

✓ 1. The bill allows certain persons to provide video service before they are issued a video service franchise. The persons who are allowed to do so are persons, other than cable operators, who ~~are authorized by municipalities to provide video service~~ and who apply to DFI for a video service franchise no later than approximately one month after the bill's effective date.

2. The bill requires a video service provider to give at least ten days advance notice to a municipality before providing video service in the municipality.

3. The bill requires a video service provider to notify DFI about any changes in the information included in an application for a video service franchise, including any expansions of a video franchise area.

4. The bill prohibits state agencies and municipalities from requiring video service providers and interim cable operators to provide institutional networks or equivalent capacity. The bill defines "institutional network" as a network that connects governmental, educational, and community institutions.

5. The bill repeals requirements enforced by DATCP and district attorneys regarding cable television subscriber rights regarding service interruptions and disconnections, repairs, program service deletions, and rate increases.

6. The bill repeals a prohibition under current law on the provision of electronically published news, feature and entertainment material, and electronic advertising service by certain telecommunications utilities.

7. The bill changes other requirements under current law that apply or refer to cable television or cable operators so that they also apply or refer to video service or video service providers. Such requirements include the following: 1) requirements applicable to access to cable service in multiunit dwellings, mobile home parks, and condominiums; 2) requirements applicable to a municipality's construction, ownership, or operation of facilities for providing cable service, telecommunications service, or broadband service; 3) exemptions related to the telephone company tax and the personal property tax; 4) the sales and use tax on the sale of cable television system services; 5) certain requirements enforced by the PSC regarding extensions by utilities and cable operators over the rights-of-way of other utilities and cable operators; and 6) theft of cable service.

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Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 11.01 (17g) of the statutes is amended to read:

2           11.01 (17g) "Public access channel" means a PEG channel ~~that is required~~  
3 ~~under a franchise granted under s. 66.0419 (3) (b) by a city, village, or town to a cable~~  
4 ~~operator, as defined in s. 66.0419 (2) (b), and, as defined in s. 66.0420 (2) (s), that is~~  
5 used for public access purposes, but does not include a PEG channel that is used for  
6 governmental or educational purposes.

7           **SECTION 2.** 20.395 (3) (jh) of the statutes is amended to read:

8           20.395 (3) (jh) *Utility facilities within highway rights-of-way, state funds.*  
9 From the general fund, all moneys received from telecommunications providers, as  
10 defined in s. 196.01 (8p), or cable television telecommunications service providers,  
11 as defined in s. 196.01 (1r), for activities related to locating, accommodating,  
12 operating, or maintaining utility facilities within highway rights-of-way, for such  
13 purposes.

14           **SECTION 3.** 25.40 (1) (a) 4m. of the statutes is amended to read:

15           25.40 (1) (a) 4m. Moneys received from telecommunications providers or cable  
16 television telecommunications service providers that are deposited in the general  
17 fund and credited to the appropriation account under s. 20.395 (3) (jh).

18           **SECTION 4.** 60.23 (24) of the statutes is repealed.

19           **SECTION 5.** 66.0419 (title), (1), (2) and (3) of the statutes are repealed.



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1           **SECTION 6.** 66.0419 (3m) of the statutes is renumbered 66.0420 (12), and  
2           66.0420 (12) (title), (a) and (b) 2., as renumbered, are amended to read:

3           66.0420 **(12)** (title) MUNICIPAL CABLE TELEVISION SYSTEM COSTS. (a) Except for  
4           costs for any of the following, a municipality that owns and operates a cable television  
5           system, or an entity owned or operated, in whole or in part, by such a municipality,  
6           may not require nonsubscribers of the cable television system to pay any of the costs  
7           of the cable television system:

8           1. ~~Public, educational, and governmental access~~ PEG channels.

9           2. Debt service on bonds issued under s. 66.0619 to finance the construction,  
10          renovation, or expansion of a cable television system.

11          3. The provision of broadband service by the cable television system, if the  
12          requirements of s. 66.0422 (3d) (a), (b), or (c) are satisfied.

13          (b) 2. A majority of the governing board of the municipality votes to submit the  
14          question of supporting the operation of a cable television system by the municipality  
15          to the electors in an advisory referendum and a majority of the voters in the  
16          municipality voting at the advisory referendum vote to support the operation of a  
17          cable television system by the municipality.

18          **SECTION 7.** 66.0420 of the statutes is created to read:

19          **66.0420 Video service.** (1) **LEGISLATIVE FINDINGS.** The legislature finds all  
20          of the following:

21          (a) Video service brings important daily benefits to state residents by providing  
22          news, education, and entertainment.

23          (b) Uniform regulation of all video service providers by this state is necessary  
24          to ensure that state residents receive adequate and efficient video service and to  
25          protect and promote the public health, safety, and welfare.

**BILL****SECTION 7**

1 (c) Fair competition in the provision of video service will result in new and more  
2 video programming choices for consumers in this state, and a number of providers  
3 have stated their desire to provide that service.

4 (d) Timely entry into the market is critical for new entrants seeking to compete  
5 with existing providers.

6 (e) This state's economy would be enhanced by additional investment in  
7 communications and video programming infrastructure by existing and new  
8 providers of video service.

9 (f) Minimal regulation of all providers of video service within a uniform  
10 framework will promote the investment described in par. (e).

11 (g) Ensuring that existing providers of video service are subject to the same  
12 regulatory requirements and procedures as new entrants will ensure fair  
13 competition among all providers.

14 (h) This section is an enactment of statewide concern for the purpose of  
15 providing uniform regulation of video service that promotes investment in  
16 communications and video infrastructures and the continued development of this  
17 state's video service marketplace within a framework that is fair and equitable to all  
18 providers.

19 (2) DEFINITIONS. In this section:

20 (a) "Affiliate", when used in relation to any person, means another person who  
21 owns or controls, is owned or controlled by, or is under common ownership or control  
22 with such person.

23 (b) "Basic local exchange service area" means the area on file with the public  
24 service commission in which a telecommunications video service provider provides  
25 basic local exchange service, as defined in s. 196.01 (1g).

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1 (c) "Cable franchise" means a franchise granted under s. 66.0419 (3) (b), 2005  
2 stats.

3 (d) "Cable operator" has the meaning given in 47 USC 522 (5).

4 (e) "Cable service" has the meaning given in 47 USC 522 (6).

5 (f) "Cable system" has the meaning given in 47 USC 522 (7).

6 (g) "Department" means the department of financial institutions.

7 (h) "FCC" means the federal communications commission.

8 (i) "Franchise fee" has the meaning given in 47 USC 542 (g), and includes any  
9 compensation required under s. 66.0425.

10 (j) 1. "Gross receipts" means all revenues received by and paid to a video service  
11 provider by subscribers residing within a municipality for video service, including  
12 all of the following:

13 a. Recurring charges for video service.

14 b. Event-based charges for video service, including pay-per-view and  
15 video-on-demand charges.

16 c. Rental of set top boxes and other video service equipment.

17 d. Service charges related to the provision of video service, including activation,  
18 installation, repair, and maintenance charges.

19 e. Administrative charges related to the provision of video service, including  
20 service order and service termination charges.

21 2. Notwithstanding subd. 1., "gross receipts" does not include any of the  
22 following:

23 a. Discounts, refunds, and other price adjustments that reduce the amount of  
24 compensation received by a video service provider.

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1           b. Uncollectible fees, except that any uncollectible fees that are written off as  
2       bad debt but subsequently collected shall be included as gross receipts in the period  
3       collected, less the expenses of collection.

4           c. Late payment charges.

5           d. Maintenance charges.

6           e. Amounts billed to video service subscribers to recover taxes, fees, surcharges  
7       or assessments of general applicability or otherwise collected by a video service  
8       provider from video service subscribers for pass through to any federal, state, or local  
9       government agency, including video service provider fees and regulatory fees paid to  
10      the FCC under 47 USC 159.

11          f. Revenue from the sale of capital assets or surplus equipment not used by the  
12      purchaser to receive video service from the seller of those assets or surplus  
13      equipment.

14          g. Charges, other than those described in subd. 1., that are aggregated or  
15      bundled with amounts described in subd. 1. and billed to video service subscribers,  
16      including but not limited to any revenues received by a video service provider or its  
17      affiliates for telecommunications services, information services, or the provision of  
18      directory or Internet advertising, including yellow pages, white pages, banner  
19      advertisement, and electronic publishing, if a video service provider can reasonably  
20      identify such charges on books and records kept in the regular course of business or  
21      by other reasonable means.

22          h. Fees for supporting institutional networks or PEG channels, if any, that are  
23      collected from subscribers.

24          i. Reimbursement by programmers of marketing costs actually incurred by a  
25      video service provider.

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1 (k) "Household" means a house, apartment, mobile home, group of rooms, or  
2 single room that is intended for occupancy as separate living quarters. For purposes  
3 of this paragraph, "separate living quarters" are those in which the occupants live  
4 and eat separately from any other persons in the building and which have direct  
5 access from the outside of the building or through a common hall.

6 (L) "Incumbent cable operator" means a person who, immediately before the  
7 effective date of this paragraph, was providing cable service under a cable franchise,  
8 expired cable franchise, or cable franchise extension, or under an ordinance or  
9 resolution adopted or enacted by a municipality.

10 (m) "Institutional network" means a network that connects governmental,  
11 educational, and community institutions.

12 (n) "Interim cable operator" means an incumbent cable operator that elects to  
13 continue to provide cable service under a cable franchise as specified in sub. (3) (b)  
14 2. a.

15 (o) "Issued" means, with respect to a video service franchise, issued or  
16 considered to be issued by the department under sub. (3) (f) 2.

17 (p) "Large telecommunications video service provider" means a  
18 telecommunications video service provider that has more than 500,000 basic local  
19 exchange access lines in this state.

20 (q) "Low-income household" means any individual or group of individuals  
21 living together as one economic unit in a household whose aggregate annual income  
22 is not more than \$35,000, as identified by the United States Census Bureau as of  
23 January 1, 2007.

24 (r) "Municipality" means a city, village, or town.

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1 (s) "PEG channel" means a channel designated for noncommercial public,  
2 educational, or governmental use.

3 (r) "Service tier" means a category of video service for which a separate rate is  
4 charged.

5 (u) "State agency" means any board, commission, committee, department, or  
6 office in the state government.

7 (v) "Telecommunications video service provider" means a video service provider  
8 that uses facilities for providing telecommunications service, as defined in s. 196.01  
9 (9m), also to provide video service.

10 (w) "Video franchise area" means the area or areas described in an application  
11 for a video service franchise under sub. (3) (d) 2., as modified, if applicable, in a  
12 notification made under sub. (3) (j).

13 (x) "Video programming" means programming provided by, or generally  
14 considered comparable to programming provided by, a television broadcast station.

15 (y) "Video service" means any video programming service, cable service, or  
16 service provided via an open video system that complies with 47 USC 573, that is  
17 provided through facilities located at least in part in public rights-of-way, without  
18 regard to delivery technology, including Internet protocol technology or any other  
19 technology. "Video service" does not include any of the following:

20 1. Video programming provided by a commercial mobile radio service provider,  
21 as defined in s. 196.01 (2g).

22 2. Video programming provided solely as part of and via a service that enables  
23 users to access content, information, electronic mail, or any other service offered over  
24 the public Internet.

25 (z) "Video service franchise" means a franchise issued under sub. (3) (f) 2.

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(zb) "Video service network" means wireline facilities, or any component thereof, located at least in part in the public right-of-way that deliver video service, without regard to delivery technology, including Internet protocol technology or any other technology. "Video service network" includes a cable system.

(zg) "Video service provider" means a person, including an incumbent cable operator, who is issued a video service franchise or an affiliate, successor, or assign of such a person.

(zm) "Video service provider fee" means the fee paid by a video service provider under sub. (7).

**(3) AUTHORITY TO PROVIDE VIDEO SERVICE.** (a) *In general.* Except for an interim cable operator, and except as provided in par. (c), no person may provide video service in this state unless the department has issued a video service franchise to the person and the person has provided the notice required under par. (h).

(b) *Incumbent cable operators.* 1. A municipality may not renew or extend the cable franchise of an incumbent cable operator that expires after the effective date of this subdivision .... [revisor inserts date].

2. ~~Before the expiration of a cable franchise specified in subd. 1,~~ an incumbent cable operator may do one of the following:

a. Continue to provide cable service as an interim cable operator until the cable franchise expires.

b. Apply for a video service franchise. If an incumbent cable operator applies for a video service franchise, the cable franchise shall terminate and have no effect upon issuance of the video service franchise. Upon termination of the cable franchise, the municipality that granted the franchise shall, at the request of the incumbent cable operator, surrender, return, or take such other action as may be

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1 necessary to nullify any bond, letter of credit, or similar instrument intended to  
2 secure the performance the incumbent cable operator under the cable franchise.

3 3. After the expiration of a cable franchise specified in subd. 1., an incumbent  
4 cable operator may not provide cable service in this state unless the the department  
5 has issued a video service franchise to the incumbent cable operator and the  
6 incumbent cable operator has provided the notice required under par. (h).

7 (c) *Other providers.* If a person, other than an incumbent cable operator, who  
8 was ~~authorized~~ immediately before the effective date of this paragraph .... [revisor  
9 inserts date], ~~by a municipality to provide video service~~ applies, no later than the first  
10 day of the 2nd month beginning after the effective date of this paragraph .... [revisor  
11 inserts date], for a video franchise, the person may provide video service ~~as~~  
12 ~~authorized by the municipality~~ until the department issues a video franchise to the  
13 person.

14 (d) *Application.* An applicant for a video service franchise shall submit an  
15 application to the department that consists of all of the following:

16 1. The location and telephone number of the applicant's principal place of  
17 business, the names of the principal executive officers of the applicant, and the  
18 names of any persons authorized to represent the applicant before the department.

19 2. A description of the area or areas of the state in which the applicant intends  
20 to provide video service.

21 3. The date on which the applicant intends to begin providing video service in  
22 the video franchise area.

23 4. An affidavit signed by an officer or general partner of the applicant that  
24 affirms all of the following:

(providing video service)



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1 a. That the applicant has filed or will timely file with the FCC all forms required  
2 by the FCC in advance of offering video service.

3 b. That the applicant agrees to comply with this section and all applicable  
4 federal statutes and regulations.

5 c. That the applicant is legally, financially, and technically qualified to provide  
6 video service.

7 (e) *Service upon municipalities.* 1. At the time that an applicant submits an  
8 application under par. (d), or a video service provider submits a notification  
9 regarding a modification to an application under par. (j), to the department, the  
10 applicant or video service provider shall serve a copy of the application or notification  
11 on each municipality in the video franchise area.

12 2. a. This subdivision applies only to a municipality that, under subd. 1., is  
13 served a copy of an application or that, under subd. 1., is served a copy of a  
14 notification relating to an expansion of the area or areas of the state in which a video  
15 service provider intends to provide video service, if the municipality has not  
16 previously been served a copy of an application under subd. 1. by ~~the~~ video service  
17 provider.

18 b. If a municipality specified in subd. 2. a. has granted any cable franchise that  
19 is in effect immediately before the effective date of this subdivision .... [revisor inserts  
20 date], the municipality shall, no later than 10 business days after receipt of the copy,  
21 notify the applicant in writing of the number of PEG channels for which incumbent  
22 cable operators are required to provide channel capacity in the municipality and the  
23 percentage of revenues that incumbent cable operators are required to pay the  
24 municipality as franchise fees.

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1 (f) *Department duties.* 1. No later than 10 business days after the filing of an  
2 application, the department shall notify the applicant in writing as to whether the  
3 application is complete and, if the department has determined that the application  
4 is not complete, the department shall state the reasons for the determination.

5 2. No later than 10 business days after the filing of an application that the  
6 department has determined is complete, the department shall issue a video service  
7 franchise to the applicant and, if the department fails to do so, the department shall  
8 be considered to have issued a video service franchise to the applicant, unless the  
9 applicant withdraws the application or agrees with the department to an extension  
10 of time.

11 (g) *Effect of video service franchise.* A video service franchise issued by the  
12 department authorizes a video service provider to construct, operate, maintain, and  
13 repair a video service network to provide video service in the video franchise area.

14 (h) *Notice before providing service.* No later than 10 days before providing video  
15 service in a municipality in a video franchise area, a video service provider shall  
16 provide notice to the department and the municipality.

17 (i) *Expiration of video service franchise.* A video service franchise issued to a  
18 video service provider does not expire, unless the video service provider gives 30 days'  
19 advance notice to the department that the video service provider intends to  
20 terminate the video service franchise. If a video service provider gives such notice,  
21 the video service franchise shall expire on the termination date stated in the notice.

22 (j) *Modifications.* If there is any change in the information included in an  
23 application filed by a video service provider under this subsection, the video service  
24 provider shall notify the department and update the information within 10 business  
25 after the change, except that if the video service provider determines to expand the

occupy the public rights-of-way  
and to

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1 area or areas of the state in which the video service provider intends to provide video  
2 service, the video service provider shall notify the department as soon as practicable  
3 after making such a determination.

4 (4) FRANCHISING AUTHORITY. For purposes of 47 USC 521 to 573, the state is the  
5 exclusive franchising authority for video service providers in this state. No  
6 municipality may require a video service provider to obtain a franchise to provide  
7 video service or impose on a video service provider any fee or requirement relating  
8 to the construction of a video service network or the provision of video service,  
9 including any requirement to deploy facilities or equipment or any requirement  
10 regarding rates for video service, except as specifically authorized under this section.

11 (5) PEG CHANNELS. (a) *Maximum number of PEG channels.* 1. If an incumbent  
12 cable operator is providing channel capacity for PEG channels to a municipality  
13 under a cable franchise in effect immediately before the effective date of this  
14 subdivision .... [revisor inserts date], the municipality shall require each interim  
15 cable operator or video service provider that provides video service in the  
16 municipality to provide channel capacity for the same number of PEG channels for  
17 which channel capacity is provided immediately before the effective date of this  
18 subdivision .... [revisor inserts date].

19 2. a. Except as provided in subd. 2. b. and c., if no incumbent cable operator is  
20 providing channel capacity for PEG channels to a municipality under a cable  
21 franchise that is in effect immediately before the effective date of this subd. 2. a. ....  
22 [revisor inserts date], then, if the municipality has a population of 50,000 or more,  
23 the municipality may require each interim cable operator and video service provider  
24 that provides video service in the municipality to provide channel capacity for up to  
25 3 PEG channels, and, if the municipality has a population of less than 50,000, the

but no later than 10 business days before  
providing video service in the expansion area or  
areas

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1 municipality may require each interim cable operator and video service provider that  
2 provides video service in the municipality to provide channel capacity for no more  
3 than 2 PEG channels.

4 b. If an interim cable operator or video service provider distributes video  
5 programming to more than one municipality through a single headend or video hub  
6 office and the aggregate population of the municipalities is 50,000 or more, the  
7 municipalities may not require the interim cable operator or video service provider  
8 to provide, in the aggregate, channel capacity for more than 3 PEG channels under  
9 subd. 2. a.

10 c. If an interim cable operator or video service provider distributes video  
11 programming to more than one municipality through a single headend or video hub  
12 office and the aggregate population of the municipalities is less than 50,000, the  
13 municipalities may not require the interim cable operator or video service provider  
14 to provide, in the aggregate, channel capacity for more than 2 PEG channels under  
15 subd. 2. a.

16 3. An interim cable operator or video service provider shall provide any channel  
17 capacity for PEG channels required under this paragraph on any service tier that is  
18 viewed by more than 50 percent of the interim cable operator's or video service  
19 provider's customers.

20 4. A video service provider's duty to provide any additional channel capacity  
21 for PEG channels that is required by a municipality under this paragraph first  
22 applies on the date that the video service provider begins to provide service in the  
23 municipality or, if the municipality is required to provide notice under sub. (3) (e) 2.,  
24 on the date that the video service provider begins to provide video service in the

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1 municipality or on the 90th day after the video service provider receives the  
2 municipality's notice, whichever is later.

3 (b) *Exceptions.* 1. a. Notwithstanding par. (a), an interim cable operator or  
4 video service provider may reprogram for any other purpose any channel capacity  
5 provided for a PEG channel required by a municipality under par. (a) if the PEG  
6 channel is not substantially utilized by the municipality. If the municipality certifies  
7 to the interim cable operator or video service provider that reprogrammed channel  
8 capacity for a PEG channel will be substantially utilized by the municipality, the  
9 interim cable operator or video service provider shall, no later than 120 days after  
10 receipt of the certification, restore the channel capacity for the PEG channel.  
11 Notwithstanding par. (a) 3., an interim cable operator or video service provider may  
12 provide restored channel capacity for a PEG channel on any service tier.

13 b. For purposes of this subdivision, a PEG channel is substantially utilized by  
14 a municipality if the municipality provides 12 hours or more of programming on the  
15 PEG channel each calendar day and at least 80 percent of that programming is  
16 locally produced and not repeated.

17 2. Notwithstanding par. (a), if a municipality fails to provide the notice  
18 specified in sub. (3) (e) 2. before the deadline specified in sub. (3) (e) 2., no interim  
19 cable operator or video service provider is required to provide channel capacity for  
20 any PEG channel until the 90th day after the municipality provides such notice.

21 (c) *Powers and duties of municipalities.* 1. Except as otherwise required under  
22 par. (a), a municipality may not require an interim cable operator or video service  
23 provider to provide any funds, services, programming, facilities, or equipment  
24 related to public, educational, or governmental use of channel capacity.

**BILL****SECTION 7**

1           2. The operation of any PEG channel for which a municipality requires an  
2 interim cable operator or video service provider to provide channel capacity under  
3 par. (a), and the production of any programming appearing on such a PEG channel,  
4 shall be the sole responsibility of the municipality and, except as provided in par. (d)  
5 1., the interim cable operator or video service provider shall bear only the  
6 responsibility to transmit programming appearing on the PEG channel.

7           3. A municipality that requires an interim cable operator or video service  
8 provider to provide channel capacity for a PEG channel under par. (a) shall do all of  
9 the following:

10           a. Ensure that all content and programming that the municipality provides or  
11 arranges to provide for transmission on the PEG channel is submitted to the interim  
12 cable operator or video service provider in a manner and form that is capable of being  
13 accepted and transmitted by the interim cable operator or video service provider over  
14 its video service network without changing the content or transmission signal and  
15 that is compatible with the technology or protocol, including Internet protocol  
16 television, utilized by the interim cable operator or video service provider to deliver  
17 video service.

18           b. Make the content and programming that the municipality provides or  
19 arranges to provide for transmission on a PEG channel available in a  
20 nondiscriminatory manner to all interim cable operators and video service providers  
21 that provide video service in the municipality.

22           (d) *Duties of interim cable providers and video service provider.* 1. If a  
23 municipality requires an interim cable operator or video service provider to provide  
24 channel capacity for a PEG channel under par. (a), the interim cable operator or video  
25 service provider shall be required to provide only the first 200 feet of transmission

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1 line that is necessary to connect ~~the~~ the interim cable operator's or video service  
2 provider's video service network one distribution point used by the municipality to  
3 transmit programming for the PEG channel.

4 2. If the interconnection of the video service networks of interim cable operators  
5 or video service providers is technically necessary and feasible for the transmission  
6 of programming for any PEG channel for which channel capacity is required by a  
7 municipality under par. (a), the interim cable operators and video service providers  
8 shall negotiate in good faith for interconnection on mutually acceptable rates, terms,  
9 and conditions, except that an interim cable operator or video service provider who  
10 requests interconnection is responsible for interconnection costs, including the cost  
11 of transmitting programming from its origination point to the interconnection point.  
12 Interconnection may be accomplished by direct cable microwave link, satellite, or  
13 any other reasonable method.

14 (6) INSTITUTIONAL NETWORKS. ~~No~~ state agency or municipality may require an  
15 interim cable operator or video service provider to provide any institutional network  
16 or equivalent capacity on its video service network.

17 (7) VIDEO SERVICE PROVIDER FEE. (a) *Duty to pay fee.* 1. Notwithstanding s.  
18 66.0611 and except as provided in subd. 2., a video service provider shall, on a  
19 quarterly calendar basis, calculate and pay to each municipality in which the video  
20 service provider provides video service a video service provider fee equal to the  
21 percentage of the video service provider's gross receipts that is specified in par. (b).  
22 A video service provider shall remit the fee to the municipality no later than 45 days  
23 after the end of each quarter. Except as provided in subd. 2, the duty to remit the  
24 fee first applies to the quarter in which the video service provider begins to provide  
25 service in the municipality or, if the municipality is required to provide notice under

or par. (b) 1. ✓

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1 sub. (3) (e) 2., to the quarter in which the video service provider begins to provide  
2 service in the municipality or to the quarter that includes the 45th day after the video  
3 service provider receives the municipality's notice, whichever quarter is later.

4 2. If a municipality fails to provide the notice specified in sub. (3) (e) 2. before  
5 the deadline specified in sub. (3) (e) 2., no video service provider is required to pay  
6 a video service provider fee, and no interim cable operator is required to pay a  
7 franchise fee, to the municipality until the 45th day after the end of the quarter in  
8 which the municipality provides the notice specified in sub. (3) (e) 2.

9 (b) *Amount of fee.* The percentage applied to a video service provider's gross  
10 receipts under par. (a) 1. for each municipality shall be 5 percent or one of the  
11 following percentages, whichever is less:

12 1. If no incumbent cable operator was required to pay a franchise fee equal to  
13 a percentage of gross revenues to the municipality immediately before the effective  
14 date of this subdivision .... [revisor inserts date], the municipality may specify a  
15 percentage of no more than 5 percent. The duty of a video service provider to pay the  
16 municipality a video service fee equal to such percentage shall first apply ~~on the 45th~~  
17 day after the municipality provides notice of the percentage to the video service  
18 provider. ✓

19 2. If an incumbent cable operator was required to pay a franchise fee equal to  
20 a percentage of gross revenues to the municipality immediately before the effective  
21 date of this subdivision .... [revisor inserts date], that percentage.

22 3. If more than one incumbent cable operator was required to pay a franchise  
23 fee equal to a percentage of gross revenues to the municipality immediately before  
24 the effective date of this subdivision .... [revisor inserts date], the lowest such  
25 percentage.

to the quarter that  
includes the 45th



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1           (c) *Generally accepted accounting principles.* All determinations and  
2       computations made under this subsection shall be made pursuant to generally  
3       accepted accounting principles.

4           (d) *Record review.* A municipality may, upon reasonable written request but  
5       no more than once in any 3-year period, for the purpose of ensuring proper and  
6       accurate payment of a video service provider fee, review the business records of a  
7       video service provider that is required to pay the municipality a video service  
8       provider fee.

9           (e) *Actions to enforce payment.* 1. A municipality or a video service provider  
10      may not bring an action concerning the amount of a video service provider fee  
11      allegedly due to the municipality unless the parties have first participated in and  
12      completed good faith settlement discussions. For purposes of any future litigation,  
13      all negotiations pursuant to this paragraph shall be treated as compromise  
14      negotiations under s. 904.08.

15           2. An action regarding a dispute over the amount of a video service provider fee  
16      paid or allegedly due under this subsection shall be commenced within 3 years  
17      following the end of the calendar quarter to which the disputed amount relates or be  
18      barred, unless the parties agree in writing to an extension of time. Notwithstanding  
19      ss. 814.01, 814.02, 814.03, and 814.035, no costs may be allowed in the action to  
20      either party.

21           (f) *Itemization.* A video service provider may identify and collect the amount  
22      related to a video service provider fee as a separate line item on customer bills.

23           (g) *Invalidity of other fees.* If a video service provider pays video service  
24      provider fees to a municipality as required under this subsection, the municipality  
25      may not require the video service provider to pay any compensation under s. 66.0425,

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1 or any permit fee, encroachment fee, degradation fee, or any other fee, for the  
2 occupation of or work within public rights-of-way.

3 (8) DISCRIMINATION; ACCESS TO SERVICES. (a) *Discrimination prohibited.* 1. No  
4 video service provider may deny access to video service to any group of potential  
5 residential customers in the video service provider's video franchise area because of  
6 the race or income of the residents in the local area in which the group resides.

7 2. It is a defense to an alleged violation of subd. 1. based on income if the video  
8 service provider has met either of the following conditions:

9 a. No later than 3 years after the date on which the video service provider began  
10 providing video service under this section, at least 25 percent of households with  
11 access to the video service provider's video service are low-income households.

12 b. No later than 5 years after the date on which the video service provider began  
13 providing video service under this section, at least 30 percent of the households with  
14 access to the video service provider's video service are low-income households.

15 (b) *Access.* 1. A large telecommunications video service provider shall provide  
16 access to its video service to the following percentages of households within the large  
17 telecommunications video service provider's basic local exchange service area:

18 a. Not less than 25 percent no later than 3 years after the date on which the  
19 large telecommunications video service provider began providing video service  
20 under this section.

21 b. Not less than 50 percent no later than 6 years after the date on which the  
22 large telecommunications video service provider began providing video service  
23 under this section, or no later than 2 years after at least 30 percent of households  
24 with access to the large telecommunications video service provider's video service  
25 subscribe to the service for 6 consecutive months, whichever occurs later.

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1           2. A large telecommunications video service provider shall file an annual report  
2 with the department regarding the large telecommunications video service  
3 provider's progress in complying with subd. 1.

4           (c) *Extensions and waivers.* A video service provider may apply to the  
5 department for an extension of any time limit specified in par. (a) 2. or (b) or a waiver  
6 of a requirement to comply with par. (b). The department shall grant the extension  
7 or waiver if the video service provider demonstrates to the satisfaction of the  
8 department that the video service provider has made substantial and continuous  
9 efforts to comply with the requirements of this subsection and that <sup>the</sup> extension or  
10 waiver is necessary due to one or more of the following factors:

11           1. The video service provider's inability to obtain access to public and private  
12 rights-of-way under reasonable terms and conditions.

13           2. Developments and buildings that are not subject to competition because of  
14 exclusive service arrangements.

15           3. Developments and buildings that are not accessible using reasonable  
16 technical solutions under commercially reasonable terms and conditions.

17           4. Natural disasters.

18           5. Other factors beyond the control of the video service provider.

19           (d) *Alternative technologies.* A video service provider may satisfy the  
20 requirements of this subsection through the use of an alternative technology, other  
21 than satellite service, that does all of the following:

22           1. Offers service, functionality, and content demonstrably similar to the  
23 service, functionality, and content provided through the video service provider's  
24 video service network.

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1           2. Provides access to PEG channels and messages broadcast over the  
2 emergency alert system.

3           (e) *Limitations.* Notwithstanding any other provision of this section, a  
4 telecommunications video service provider is not required to provide video service  
5 outside the provider's basic local exchange service area, and a video service provider  
6 that is an incumbent cable operator is not required to provide video service outside  
7 the area in which the incumbent cable operator provided cable service at the time the  
8 department issued a video service franchise to the incumbent cable operator.

9           **(9) CUSTOMER SERVICE STANDARDS.** (a) Except as provided in par. (b), upon 90  
10 days' advance notice, a municipality may require a video service provider to comply  
11 with the customer service standards specified in 47 CFR 76.309 (c) in its provision  
12 of video service. Neither the department nor any municipality shall have the  
13 authority to impose additional or different customer service standards that are  
14 specific to the provision of video service.

15           (b) No video service provider that provides video service in a municipality may  
16 be subject to any customer service standards if there is at least one other person  
17 offering cable or video service in the municipality or if the video service provider is  
18 subject to effective competition, as determined under 47 CFR 76.905, in the  
19 municipality. This paragraph does not apply to any customer service standards  
20 promulgated by rule by the department of agriculture, trade and consumer  
21 protection.

22           **(10) LIMITATION ON RATE REGULATION.** The department or a municipality may not  
23 regulate the rates charged for any cable or video service by an interim cable operator  
24 or video service provider that provides cable or video service in a municipality if at  
25 least one other interim cable operator or video service provider is providing cable or

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1 video service in the municipality and the other interim cable operator or video service  
2 provider is not an affiliate of the interim cable operator or video service provider.  
3 This subsection applies regardless of whether any affected interim cable operator or  
4 video service provider has sought a determination from the FCC regarding effective  
5 competition under 47 CFR 76.905.

6 (11) TRANSFER OF VIDEO SERVICE FRANCHISE. A person who is issued a video  
7 service franchise may transfer the video service franchise to any  
8 successor-in-interest, including a successor-in-interest that arises through  
9 merger, sale, assignment, restructuring, change of control, or any other transaction.  
10 No later than 10 days after the transfer is completed, the person originally issued the  
11 video service franchise shall provide notice of the transfer to the department and to  
12 any municipality in which the person has provided video service. Neither the  
13 department nor any municipality shall have any authority to review or approve the  
14 transfer.

15 (13) RULE-MAKING; ENFORCEMENT. (a) Notwithstanding s. 227.11, the  
16 department may not promulgate rules interpreting or establishing procedures for  
17 this section.

18 (b) Except as provided in sub. (7) (e), a municipality, interim cable operator, or  
19 video service provider that is affected by a failure to comply with this section may  
20 bring an action to enforce this section. If a court finds that a municipality, interim  
21 cable operator, or video service provider has not complied with this section, the court  
22 shall order the municipality, interim cable operator, or video service provider to  
23 comply with this section. Notwithstanding ss. 814.01, 814.02, 814.03, and 814.035,  
24 no costs may be allowed in an action under this paragraph to any party.

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1 (c) Any violation of this section may be enforced by an action on behalf of the  
2 state by the department of justice.

3 **SECTION 8.** 66.0421 (title) of the statutes is amended to read:

4 **66.0421 (title) Access to cable video service.**

5 **SECTION 9.** 66.0421 (1) (a) of the statutes is repealed.

6 **SECTION 10.** 66.0421 (1) (b) of the statutes is repealed.

7 **SECTION 11.** 66.0421 (1) (c) of the statutes is created to read:

8 66.0421 (1) (c) "Video service" has the meaning given in s. 66.0420 (2) (y).

9 **SECTION 12.** 66.0421 (1) (d) of the statutes is created to read:

10 66.0421 (1) (d) "Video service provider" has the meaning given in s. 66.0420 (2)  
11 (zg), and also includes an interim cable operator, as defined in s. 66.0420 (2) (n).

12 **SECTION 13.** 66.0421 (2) of the statutes is amended to read:

13 66.0421 (2) INTERFERENCE PROHIBITED. The owner or manager of a multiunit  
14 dwelling under common ownership, control or management or of a mobile home park  
15 or the association or board of directors of a condominium may not prevent a cable  
16 operator video service provider from providing cable video service to a subscriber who  
17 is a resident of the multiunit dwelling, mobile home park or of the condominium or  
18 interfere with a cable-operator video service provider providing cable video service  
19 to a subscriber who is a resident of the multiunit dwelling, mobile home park or of  
20 the condominium.

21 **SECTION 14.** 66.0421 (3) of the statutes is amended to read:

22 66.0421 (3) INSTALLATION IN MULTIUNIT BUILDING. Before installation, a cable  
23 operator video service provider shall consult with the owner or manager of a  
24 multiunit dwelling or with the association or board of directors of a condominium to  
25 establish the points of attachment to the building and the methods of wiring. A cable

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1 operator video service provider shall install facilities to provide cable video service  
2 in a safe and orderly manner and in a manner designed to minimize adverse effects  
3 to the aesthetics of the multiunit dwelling or condominium. Facilities installed to  
4 provide cable video service may not impair public safety, damage fire protection  
5 systems or impair fire-resistive construction or components of a multiunit dwelling  
6 or condominium.

7 **SECTION 15.** 66.0421 (4) of the statutes is amended to read:

8 66.0421 (4) REPAIR RESPONSIBILITY. A cable-operator video service provider is  
9 responsible for any repairs to a building required because of the construction,  
10 installation, disconnection or servicing of facilities to provide cable video service.

11 **SECTION 16.** 66.0422 (title) of the statutes is amended to read:

12 **66.0422 (title) Cable television Video service, telecommunications, and**  
13 **broadband facilities.**

14 **SECTION 17.** 66.0422 (1) (a) of the statutes is repealed.

15 **SECTION 18.** 66.0422 (1) (d) of the statutes is created to read:

16 66.0422 (1) (d) "Video service" has the meaning given in s. 66.0420 (2) (y).

17 **SECTION 19.** 66.0422 (2) (intro.) of the statutes is amended to read:

18 66.0422 (2) (intro.) Except as provided in subs. (3), (3d), (3m), and (3n), no local  
19 government may enact an ordinance or adopt a resolution authorizing the local  
20 government to construct, own, or operate any facility for providing cable video  
21 service, telecommunications service, or broadband service, directly or indirectly, to  
22 the public, unless all of the following are satisfied:

23 **SECTION 20.** 66.0422 (3) (b) of the statutes is amended to read:

24 66.0422 (3) (b) A majority of the governing board of the local government votes  
25 to submit the question of supporting the operation of the facility for providing cable

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1 video service, telecommunications service, or Internet access service, directly or  
2 indirectly to the public, by the local government to the electors in an advisory  
3 referendum and a majority of the voters in the local government voting at the  
4 advisory referendum vote to support operation of such a facility by the local  
5 government.

6 **SECTION 21.** 66.0422 (3n) of the statutes is amended to read:

7 66.0422 (3n) Subsection (2) does not apply to a local government that, on March  
8 1, 2004, was providing cable video service to the public.

9 **SECTION 22.** 70.111 (25) of the statutes is amended to read:

10 70.111 (25) DIGITAL BROADCASTING EQUIPMENT. Digital broadcasting equipment  
11 owned and used by a radio station, television station, or ~~cable television system~~ video  
12 service network, as defined in s. ~~66.0419 (2) (d)~~ 66.0420 (2) (zb).

13 **SECTION 23.** 76.80 (3) of the statutes is amended to read:

14 76.80 (3) "Telecommunications services" means the transmission of voice,  
15 video, facsimile or data messages, including telegraph messages, except that  
16 "telecommunications services" does not include ~~cable television~~ video service, as  
17 defined in s. 66.0420 (2) (y), radio, one-way radio paging or transmitting messages  
18 incidental to transient occupancy in hotels, as defined in s. 254.61 (3).

19 **SECTION 24.** 77.52 (2) (a) 12. of the statutes is amended to read:

20 77.52 (2) (a) 12. The sale of cable television system services, or video services,  
21 as defined in s. 66.0420 (2) (y), including installation charges.

22 **SECTION 25.** 100.195 (1) (c) 2. of the statutes is amended to read:

23 100.195 (1) (c) 2. Telecommunications services or ~~cable television~~ services.

24 **SECTION 26.** 100.195 (1) (h) 1. of the statutes, as created by 2005 Wisconsin Act  
25 458, is repealed and recreated to read:

↑ as created by 2005  
Wisconsin Act 458, ↑



**BILL**

1           100.195 (1) (h) 1. Video service, as defined in s. 66.0420 (2) (y).

2           **SECTION 27.** 100.209 of the statutes is repealed.

3           **SECTION 28.** 165.25 (4) (ar) of the statutes, as affected by 2005 Wisconsin Act  
4   458, is amended to read:

5           165.25 (4) (ar) The department of justice shall furnish all legal services  
6   required by the department of agriculture, trade and consumer protection relating  
7   to the enforcement of ss. 100.171, 100.173, 100.174, 100.175, 100.177, 100.18,  
8   100.182, 100.20, 100.205, 100.207, ~~100.209~~, 100.21, 100.28, 100.37, 100.42, 100.50,  
9   100.51, and 100.195 and chs. 126, 136, 344, 704, 707, and 779, together with any  
10   other services as are necessarily connected to the legal services.

11          **SECTION 29.** 196.01 (1g) of the statutes is amended to read:

12          196.01 (1g) “Basic local exchange service” means the provision to residential  
13   customers of an access facility, whether by wire, cable, fiber optics or radio, and  
14   essential usage within a local calling area for the transmission of high-quality  
15   2-way interactive switched voice or data communication. “Basic local exchange  
16   service” includes extended community calling and extended area service. “Basic  
17   local exchange service” does not include additional access facilities or any  
18   discretionary or optional services that may be provided to a residential customer.  
19   “Basic local exchange service” does not include cable television service or services  
20   provided by a commercial mobile radio service provider.

21          **SECTION 30.** 196.01 (1p) of the statutes is repealed and recreated to read:

22          196.01 (1p) “Cable service” has the meaning given in 47 USC 522 (6).

23          **SECTION 31.** 196.01 (9m) of the statutes is amended to read:

24          196.01 (9m) “Telecommunications service” means the offering for sale of the  
25   conveyance of voice, data or other information at any frequency over any part of the

**BILL****SECTION 31**

1 electromagnetic spectrum, including the sale of service for collection, storage,  
2 forwarding, switching and delivery incidental to such communication and including  
3 the regulated sale of customer premises equipment. "Telecommunications service"  
4 does not include cable television service or broadcast service.

5 **SECTION 32.** 196.01 (12g) of the statutes is created to read:

6 196.01 (12g) "Video service" has the meaning given in s. 66.0420 (2) (y).

7 **SECTION 33.** 196.01 (12r) of the statutes is created to read:

8 196.01 (12r) "Video service provider" has the meaning given in s. 66.0420 (2)  
9 (zg), and also includes an interim cable operator, as defined in s. 66.0420 (2) (n).

10 **SECTION 34.** 196.04 (4) (a) (intro.) and 2. (intro.) of the statutes are  
11 consolidated, renumbered 196.04 (4) (a) (intro.) and amended to read:

12 196.04 (4) (a) (intro.) In this subsection: ~~2. "Sewerage, "sewerage system~~  
13 ~~operator"~~ means any of the following:

14 **SECTION 35.** 196.04 (4) (a) 1. of the statutes is repealed.

15 **SECTION 36.** 196.04 (4) (a) 2. a. to e. of the statutes are renumbered 196.04 (4)  
16 (a) 1. to 5.

17 **SECTION 37.** 196.04 (4) (b) of the statutes is amended to read:

18 196.04 (4) (b) If the parties cannot agree and the commission finds that public  
19 convenience and necessity or the rendition of reasonably adequate service to the  
20 public requires that a public utility, telecommunications provider, sewerage system  
21 operator, ~~or cable operator~~ video service provider be permitted to extend its lines on,  
22 over or under the right-of-way of any railroad, or requires that the tracks of any  
23 railroad be extended on, over or under the right-of-way of any public utility,  
24 telecommunications provider, sewerage system operator, ~~or cable operator~~ video  
25 service provider, the commission may order the extension by the public utility,

**BILL**

1 telecommunications provider, sewerage system operator, ~~cable-operator~~ video  
2 service provider, or railroad on, over or under the right-of-way of the other if it will  
3 not materially impair the ability of the railroad, telecommunications provider,  
4 sewerage system operator, ~~cable-operator~~ video service provider, or public utility, on,  
5 over or under whose right-of-way the extension would be made, to serve the public.  
6 The commission shall prescribe lawful conditions and compensation which the  
7 commission deems equitable and reasonable in light of all the circumstances.

8 **SECTION 38.** 196.195 (5) of the statutes is amended to read:

9 196.195 (5) COMMISSION ACTION. If after the proceedings under subs. (2), (3) and  
10 (4) the commission has determined that effective competition exists in the market  
11 for the telecommunications service which justifies a lesser degree of regulation and  
12 that lesser regulation in that market will serve the public interest, the commission  
13 may, by order, suspend any of the following provisions of law, except as provided  
14 under subs. (7) and (8): ch. 201 and s. 196.02 (2); s. 196.05; s. 196.06; s. 196.07; s.  
15 196.09; s. 196.10; s. 196.12; s. 196.13 (2); s. 196.19; tariffing requirements under s.  
16 196.194; s. 196.196 (1) or (5); s. 196.20; ~~s. 196.204 (7)~~; s. 196.21; s. 196.22; s. 196.26;  
17 s. 196.28; s. 196.37; s. 196.49; s. 196.52; s. 196.58; s. 196.60; s. 196.604; s. 196.77; s.  
18 196.78; s. 196.79; and s. 196.805.

19 **SECTION 39.** 196.203 (1m) of the statutes is amended to read:

20 196.203 (1m) Any person claiming to be a cable television telecommunications  
21 service provider under this section shall annually file with the commission any  
22 information required by the commission to determine the gross income of the person  
23 which is derived from the operation of a cable television system.

24 **SECTION 40.** 196.203 (3) (b) (intro.) of the statutes is amended to read:

**BILL****SECTION 40**

1           196.203 (3) (b) (intro.) The commission may not deny a petition filed under par.  
2           (a) by a provider of cable television service for alternative telecommunications utility  
3           status in a particular geographical area as not being in the public interest if basic  
4           local exchange service is provided in the same geographical area by any of the  
5           following:

6           **SECTION 41.** 196.203 (3) (b) 2. of the statutes is amended to read:

7           196.203 (3) (b) 2. Subject to par. (c), a telecommunications utility with 50,000  
8           or less access lines in use in this state which also provides cable television service in  
9           that geographical area, if provision of cable television service began after September  
10          1, 1994.

11          **SECTION 42.** 196.203 (3) (c) of the statutes is amended to read:

12          196.203 (3) (c) Paragraph (b) 2. shall not apply if the telecommunications  
13          utility's provision of cable television service is limited to the provision of satellite  
14          cable programming, as defined in s. 943.47 (1) (b).

15          **SECTION 43.** 196.203 (3) (d) of the statutes is amended to read:

16          196.203 (3) (d) Section 196.50 (1) (b) applies to an alternative  
17          telecommunications utility except for a provider of cable television service.

18          **SECTION 44.** 196.203 (3) (e) 1. (intro.) of the statutes is amended to read:

19          196.203 (3) (e) 1. (intro.) If a provider of cable television service files a petition  
20          under par. (a) for alternative telecommunications status to offer local exchange  
21          service, as defined in s. 196.50 (1) (b) 1., in a geographical area served by a  
22          telecommunications utility with less than 50,000 access lines in use in this state on  
23          September 1, 1994, or at any time thereafter, the commission may not deny the  
24          petition as not being in the public interest and shall do any of the following:

25          **SECTION 45.** 196.204 (7) of the statutes is repealed.

**BILL**

1           **SECTION 46.** 196.50 (1) (b) 2. e. of the statutes is amended to read:

2           196.50 (1) (b) 2. e. The holder of the permit and the applicant are both providers  
3 of cable television video service, if the holder's provision of cable television video  
4 service began after September 1, 1994. This subd. 2. e. does not apply if the holder's  
5 provision of cable television video service is limited to the provision of satellite cable  
6 programming, as defined in s. 943.47 (1) (b).

7           **SECTION 47.** 196.50 (1) (c) of the statutes is amended to read:

8           196.50 (1) (c) Any provision in an agreement or municipal franchise that  
9 prohibits entry into the telecommunications or cable television services market after  
10 September 1, 1994, is void. ~~Paragraph (b) and this paragraph do not invalidate an~~  
11 ~~ordinance enacted under s. 66.0419 which requires a provider of cable television~~  
12 ~~services to obtain a franchise before offering those services.~~

13           **SECTION 48.** 196.85 (1m) (b) of the statutes is amended to read:

14           196.85 (1m) (b) For the purpose of direct assessment under sub. (1) of expenses  
15 incurred by the commission in connection with its activities under s. 196.04 (4), the  
16 term "public utility" includes a cable operator, as defined in s. 66.0419 (2) (b) video  
17 service provider.

18           **SECTION 49.** 943.46 (title) of the statutes is amended to read:

19           **943.46 (title) Theft of cable television video service.**

20           **SECTION 50.** 943.46 (1) (a) of the statutes is renumbered 943.46 (1) (c) and  
21 amended to read:

22           943.46 (1) (c) "Cable television Video service" has the meaning given in s.  
23 196.01 (1p). "Cable television 66.0420 (2) (y), except that "video service" does not  
24 include signals received by privately owned antennas that are not connected to a

**BILL**

1 ~~cable television system~~ video service network whether or not the same signals are  
2 provided by a ~~cable television company~~ video service provider.

3 **SECTION 51.** 943.46 (1) (d) of the statutes is created to read:

4 943.46 (1) (d) "Video service network" has the meaning given in s. 66.0420 (2)  
5 (zb).

6 **SECTION 52.** 943.46 (1) (e) of the statutes is created to read:

7 943.46 (1) (e) "Video service provider" has the meaning given in s. 66.0420 (2)  
8 (zg), and also includes an interim cable operator, as defined in s. 66.0420 (2) (n).

9 **SECTION 53.** 943.46 (2) (a) of the statutes is amended to read:

10 943.46 (2) (a) Obtain or attempt to obtain ~~cable television~~ video service from  
11 a ~~company~~ provider by trick, artifice, deception, use of an illegal device or illegal  
12 decoder or other fraudulent means with the intent to deprive that ~~company~~ provider  
13 of any or all lawful compensation for rendering each type of service obtained. The  
14 intent required for a violation of this paragraph may be inferred from the presence  
15 on the property and in the actual possession of the defendant of a device not  
16 authorized by the ~~cable television company~~ video service provider, the major purpose  
17 of which is to permit reception of ~~cable television~~ video services without payment.  
18 This inference is rebutted if the defendant demonstrates that he or she purchased  
19 that device for a legitimate use.

20 **SECTION 54.** 943.46 (2) (b) of the statutes is amended to read:

21 943.46 (2) (b) Give technical assistance or instruction to any person in  
22 obtaining or attempting to obtain any ~~cable television~~ video service without payment  
23 of all lawful compensation to the ~~company~~ provider providing that service. This  
24 paragraph does not apply if the defendant demonstrates that the technical

**BILL**

1 assistance or instruction was given or the installation of the connection, descrambler  
2 or receiving device was for a legitimate use.

3 **SECTION 55.** 943.46 (2) (c) of the statutes is amended to read:

4 943.46 (2) (c) Make or maintain a connection, whether physical, electrical,  
5 mechanical, acoustical or by other means, with any cables, wires, components or  
6 other devices used for the distribution of ~~cable television~~ video services for the  
7 purpose of distributing ~~cable television~~ video service to any other dwelling unit  
8 without authority from a ~~cable television company~~ video service provider.

9 **SECTION 56.** 943.46 (2) (d) of the statutes is amended to read:

10 943.46 (2) (d) Make or maintain a connection, whether physical, electrical,  
11 mechanical, acoustical or by other means, with any cables, wires, components or  
12 other devices used for the distribution of ~~cable television~~ video services for the  
13 purpose of obtaining ~~cable television~~ video service without payment of all lawful  
14 compensation to the ~~company~~ provider providing that service. The intent required  
15 for a violation of this paragraph may be inferred from proof that the ~~cable~~ video  
16 service to the defendant's residence or business was connected under a service  
17 agreement with the defendant and has been disconnected by the ~~cable television~~  
18 ~~company~~ video service provider and that thereafter there exists in fact a connection  
19 to the ~~cable system~~ video service network at the defendant's residence or business.

20 **SECTION 57.** 943.46 (2) (e) of the statutes is amended to read:

21 943.46 (2) (e) Make or maintain any modification or alteration to any device  
22 installed with the authorization of a ~~cable television company~~ video service provider  
23 for the purpose of intercepting or receiving any program or other service carried by  
24 that ~~company~~ provider which that person is not authorized by that ~~company~~ provider  
25 to receive. The intent required for a violation of this paragraph may be inferred from

**BILL****SECTION 57**

1 proof that, as a matter of standard procedure, the ~~cable television company~~ video  
2 service provider places written warning labels on its converters or decoders  
3 explaining that tampering with the device is a violation of law and the converter or  
4 decoder is found to have been tampered with, altered or modified so as to allow the  
5 reception or interception of programming carried by the ~~cable television company~~  
6 video service provider without authority to do so. The trier of fact may also infer that  
7 a converter or decoder has been altered or modified from proof that the ~~cable~~  
8 ~~television company~~ video service provider, as a matter of standard procedure, seals  
9 the converters or decoders with a label or mechanical device, that the seal was shown  
10 to the customer upon delivery of the decoder and that the seal has been removed or  
11 broken. The inferences under this paragraph are rebutted if the ~~cable television~~  
12 ~~company~~ video service provider cannot demonstrate that the intact seal was shown  
13 to the customer.

14 **SECTION 58.** 943.46 (2) (f) of the statutes is amended to read:

15 943.46 (2) (f) Possess without authority any device or printed circuit board  
16 designed to receive from a ~~cable television system~~ video service network any ~~cable~~  
17 ~~television~~ video programming or services offered for sale over that ~~cable television~~  
18 ~~system~~ video service network, whether or not the programming or services are  
19 encoded, filtered, scrambled or otherwise made unintelligible, or perform or  
20 facilitate the performance of any of the acts under pars. (a) to (e) with the intent that  
21 that device or printed circuit be used to receive that ~~cable television company's~~ video  
22 service provider's services without payment. Intent to violate this paragraph for  
23 direct or indirect commercial advantage or private financial gain may be inferred  
24 from proof of the existence on the property and in the actual possession of the



**BILL**

1 defendant of a device if the totality of circumstances, including quantities or  
2 volumes, indicates possession for resale.

3 **SECTION 59.** 943.46 (2) (g) of the statutes is amended to read:

4 943.46 (2) (g) Manufacture, import into this state, distribute, publish,  
5 advertise, sell, lease or offer for sale or lease any device, printed circuit board or any  
6 plan or kit for a device or for a printed circuit designed to receive the ~~cable television~~  
7 video programming or services offered for sale over a ~~cable television system~~ video  
8 network system from a ~~cable television system~~ video network system, whether or not  
9 the programming or services are encoded, filtered, scrambled or otherwise made  
10 unintelligible, with the intent that that device, printed circuit, plan or kit be used for  
11 the reception of that ~~company's~~ provider's services without payment. The intent  
12 required for a violation of this paragraph may be inferred from proof that the  
13 defendant has sold, leased or offered for sale or lease any device, printed circuit  
14 board, plan or kit for a device or for a printed circuit board in violation of this  
15 paragraph and during the course of the transaction for sale or lease the defendant  
16 expressly states or implies to the buyer that the product will enable the buyer to  
17 obtain ~~cable television~~ video service without charge.

18 **SECTION 60.** 943.46 (5) of the statutes is amended to read:

19 943.46 (5) EXCEPTION. This section does not affect the use by a person of ~~cable~~  
20 ~~television~~ video services if the services have been paid for and the use is exclusive to  
21 the person's dwelling unit. This subsection does not prohibit a board or council of any  
22 city, village or town from specifying the number and manner of installation of outlets  
23 used by any such person for ~~cable television~~ video services and does not prohibit a  
24 ~~cable television company~~ video service provider, in any written contract with a

**BILL****SECTION 60**

1 subscriber, from requiring the ~~company's~~ provider's approval for any increase in the  
2 number of those outlets used.

3 **SECTION 61. Effective dates.** This act takes effect on the day after publication,  
4 except as follows:

5 (1) The treatment of sections 100.195 (1) (c) 2. and (h) 1. and 165.25 (4) (ar) of  
6 the statutes takes effect on April 1, 2007, or on the day after publication, whichever  
7 is later.

8 (END)

**2007-2008 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1914/2ins  
MDK:.....

1 **INSERT 23-14:**

2 Notwithstanding any franchise, ordinance, or resolution in effect on the effective  
3 date of this subsection .... [revisor inserts date], no

4 **INSERT 29-12:**

5 and the person to whom the video service franchise is transferred shall submit the  
6 information and affidavit specified in sub. (3) (d) 1. and 4. to the department and to  
7 any such municipality

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1914/2445 dn

MDK:.....

gjs

Rep. Montgomery:

Here are the differences between this version and the previous version:

1. In proposed s. 66.0420 (3) (b) 2. (intro.), I eliminated the language regarding "before the expiration of a cable franchise." ✓
2. In proposed s. 66.0420 (3) (c), I eliminated the references to authorization by a municipality. ✓
3. In proposed s. 66.0420 (3) (e) 2. a., I changed "the video service provider" to "that video service provider." ✓
4. In proposed s. 66.0420 (3) (g), I added a reference to occupying the public rights-of-way. ✓
5. In proposed s. 66.0420 (3) (j), I revised the expanded franchise area deadline to refer to no later than 10 business days before providing video service in the expansion area or areas. ✓
6. I changed proposed s. 66.0420 (5) (d) 1. and (8) (c) to make it more readable. ✓ them
7. I added a "notwithstanding" clause to proposed s. 66.0420 (6). ✓
8. I corrected proposed s. 66.0420 (7) (a) 1. (see the third sentence) and (b) 1. (see the second sentence). ✓
9. I revised proposed s. 66.0420 (11) to impose a notification duty on the transferee. ✓

Mark D. Kunkel  
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**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1914/2dn  
MDK:cjs:nwn

March 2, 2007

Rep. Montgomery:

Here are the differences between this version and the previous version:

1. In proposed s. 66.0420 (3) (b) 2. (intro.), I eliminated the language regarding "before the expiration of a cable franchise."
2. In proposed s. 66.0420 (3) (c), I eliminated the references to authorization by a municipality.
3. In proposed s. 66.0420 (3) (e) 2. a., I changed "the video service provider" to "that video service provider."
4. In proposed s. 66.0420 (3) (g), I added a reference to occupying the public rights-of-way.
5. In proposed s. 66.0420 (3) (j), I revised the expanded franchise area deadline to refer to no later than 10 business days before providing video service in the expansion area or areas.
6. I changed proposed s. 66.0420 (5) (d) 1. and (8) (c) to make them more readable.
7. I added a "notwithstanding" clause to proposed s. 66.0420 (6).
8. I corrected proposed s. 66.0420 (7) (a) 1. (see the third sentence) and (b) 1. (see the second sentence).
9. I revised proposed s. 66.0420 (11) to impose a notification duty on the transferee.

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---

**From:** Raschka, Adam  
**Sent:** Monday, March 05, 2007 2:23 PM  
**To:** Kunkel, Mark  
**Subject:** LRB 1914

Mark,

Below is some additional language for LRB 1914

Page 16, line 6 after (h) insert:

; provided, however, that an incumbent cable operator that was providing video service to subscribers before the expiration of its cable franchise may continue to do so if the incumbent cable operator applies for a video service franchise under par.(2)(b) no later than the first day of the 2nd month beginning after the effective date of this paragraph.

Please give me a call if you have any questions.

Thanks,

Adam

**Kunkel, Mark**

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**From:** Raschka, Adam  
**Sent:** Monday, March 05, 2007 4:26 PM  
**To:** Kunkel, Mark  
**Subject:** RE: LRB 1914

In order to take care of both problems, how about this (adding language in CAPS and deleting language in brackets):

"An incumbent cable operator whose cable franchise expires after the effective date of the act may not, after expiration of the cable franchise, provide video service in this state unless IT HAS APPLIED FOR [the department has issued] a video service franchise [to the incumbent cable operator] and the incumbent cable operator, UPON RECEIVING SUCH FRANCHISE, [has provided] PROVIDES the notice required under par. (h). An incumbent cable operator whose cable franchise expired before the effective date of the act, and who was providing cable service immediately before the effective date of this act, may continue to provide cable service if, no later than the first day of the 2nd month beginning after the effective date of the act, the incumbent cable operator applies for a video service franchise under subd. 2. b."

---

**From:** Kunkel, Mark  
**Sent:** Monday, March 05, 2007 3:49 PM  
**To:** Raschka, Adam  
**Subject:** RE: LRB 1914

The language that you provided would be added to the following provision of the bill:

"After the expiration of a cable franchise specified in subd. 1. [i.e., a cable franchise that expires **after** the effective date of the bill], an incumbent cable operator may not provide cable service in this state unless the department has issued a video service franchise to the incumbent cable operator and the incumbent cable operator has provided the notice required under par. (h)."

Is the language that you provided below intended to cover incumbent cable operators who have cable franchises that expired **before** the effective date of the bill? If so, I don't think you can address your concerns by adding the language to the above provision of the bill. Instead, you might want to rewrite the above provision as follows:

"An incumbent cable operator whose cable franchise expires after the effective date of the act may not, after expiration of the cable franchise, provide video service in this state unless the department has issued a video service franchise to the incumbent cable operator and the incumbent cable operator has provided the notice required under par. (h). An incumbent cable operator whose cable franchise expired before the effective date of the act, and who was providing cable service immediately before the effective date of this act, may continue to provide cable service if, no later than the first day of the 2nd month beginning after the effective date of the act, the incumbent cable operator applies for a video service franchise under subd. 2. b."

If you take my suggested approach, you might still have to worry about an incumbent cable operator whose franchise expires a short time after the effective date of the bill. For example, if a franchise expires the week after the bill's effective date, the cable operator may not provide cable service until DFI issues a video service franchise. You could address that problem by delaying the bill a short period of time to give cable operators some time to plan ahead and apply for franchises as soon as the bill goes into effect, or you could make further revisions to the language I suggested above to address the situation.

Let me know what you think.

-- Mark

## Kunkel, Mark

---

**From:** Stolzenberg, John  
**Sent:** Tuesday, March 06, 2007 10:49 AM  
**To:** Raschka, Adam  
**Cc:** Kunkel, Mark  
**Subject:** Comments on LRB-1914/2

Adam,

Per our discussion this morning, this note sets forth the comments and questions I have so far on LRB-1914/2. I have discussed all of these comments and questions with Mark Kunkel. In light of the schedule for introducing the video franchising bill later this week that you mentioned during our discussion, I have divided these comments and questions into three categories:

1. Clarification of text that I feel would be appropriate to address prior to the introduction.
2. Potential clarification of text that, as needed, can be addressed after introduction.
3. Technical changes.

### 1. Text Clarification Prior to Introduction

- *delete p12-22* Page 12, lines 22 and 23: Subpar. h. on these lines indicates that the fees for supporting institutional networks or PEG channels, if any, that are collected from subscribers will not be included in "gross receipts." This implies that these types of fees may be authorized under the draft. In contrast, the draft prohibits on page 23, line 14 to 18, any state agency or municipality from requiring an interim cable operator or video service provider to provide any institutional network, and prohibits on page 21, lines 21 to 24 any municipality from requiring an interim cable operator or video service provider to provide any funds related to public, educational, or governmental use of channel capacity. With these prohibitions, it is not clear under what circumstances fees for supporting institutional networks or PEG channels may be collected from subscribers of a video service provider, unless perhaps it was done on a voluntary basis. If subpar. h. is needed, the relation of its text to these prohibitions should be clarified so that the intent is clear.
- Page 19, lines 5 to 10: I understand that the intent is that the draft will prohibit a municipality from imposing any fees or substantive requirements under s. 66.0425 on a video service provider. The fee exemption is explicit on page 26, line 5. My understanding is that the sentence on page 19, lines 5 to 10 includes the exemption from substantive requirements under s. 66.0425. To clarify this intent and avoid misinterpretations of the draft, I'd suggest that "notwithstanding s. 66.0425," be added at the beginning of this sentence on page 19.
- Page 20, line 20 to page 21, line 2: As drafted, this text on when a video service provider's duty to provide additional channel capacity for PEG channels first applies is confusing. I am not sure what the phrase "whichever is later" at the end of the sentence applies to. Also, as structured, the purpose of the repetition of the phrase "the date that the video service provider begins to provide service in the municipality" is confusing. Does the following revision of subd. 4. reflect your intent?
  4. A video service provider's duty to provide any additional channel capacity for PEG channels that is required by a municipality under this paragraph first applies to whichever of the following dates is applicable:
    - a. If the municipality is not required to provide notice under sub. (3) (e) 2., on the date that the video service provider begins to provide video service in the municipality.



b. If the municipality is required to provide notice under sub. (3) (e) 2., on the date that the video service provider begins to provide video service in the municipality or on the 90th day after the video service provider receives the municipality's notice, whichever is later.

A similar comment applies to the application of video service provider fees on page 24, lines 1 to 6.

## **2. Text Clarification After Introduction**

- Page 14, line 24: As I continue to learn about the different ways that people use "public" as a modifier of "Internet" (e.g., free access to the Internet) and the different types of video programming available on the Internet, I'm beginning to question whether "public Internet" on this line may need to be defined to avoid or minimize issues in the Legislature on the meaning of this term and, assuming the draft is enacted, legal battles over its meaning.
- Page 28, line 8: The reference to the "emergency alert system" on this line raises questions on whether the draft should assign all video service providers any responsibilities to implement the system. Other than realizing that it is a requirement imposed by the FCC, I am not up on the content or applicability of the FCC's regulations or the authority of local or state officials to use the system in an emergency.

## **3. Technical Changes**

- Page 16, line 2: Insert "of" after "performance".
- Page 29, lines 4, 5, and 6: Delete "cable or". [Cable service is included in video service.]
- Page 37, lines 14 to 16: Delete the sentence on these lines. [The exception on these lines apply to a person whose video programming is limited to the "provision of satellite cable programming, as defined in s. 943.47 (1) (b)." Since "video service" is defined to exclude satellite cable services, this sentence appears to not be needed.]
- Page 37, line 19: Delete "television". [SECTION 30 replaces "cable television services" with "cable services" in ch. 196.]
- Page 41, lines 14 and 15: Substitute "video service network" for "video network system". [Video service network is the term defined in SECTION 51.]

Let me know if you have any questions on any of these comments.

John

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